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UNITED STATES DISTRICT COURT

**DISTRICT OF NEVADA**

13 L. SEVILLE PARKS, ) 3:04-cv-00501-HDM-VPC  
14 Plaintiff, )  
15 vs. ) ORDER  
16 DEBRA BROOKS, et al., )  
17 Defendants. )

Following remand by the Court of Appeals, two claims remained to be tried in this action: (1) plaintiff's claim that defendants violated his First Amendment right to free exercise of his religion when they denied him a kosher diet; and (2) plaintiff's claim that the prison regulation used to deny him kosher meals violates the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). After the plaintiff declined to present any evidence to support his claims at trial, the court dismissed this action with prejudice. As additional grounds for dismissing the RLUIPA claim, the court finds and concludes as follows.

1        RLUIPA provides that “[n]o government shall impose or  
 2 implement a land use regulation in a manner that imposes a  
 3 substantial burden on the religious exercise of a person residing  
 4 in or confined to an institution . . . even if the burden results  
 5 from a rule of general applicability, unless the government  
 6 demonstrates that imposition of the burden on that person – (1) is  
 7 in furtherance of a compelling governmental interest; and (2) is  
 8 the least restrictive means of furthering that compelling  
 9 governmental interest.” 42 U.S.C. § 2000cc-1(a). RLUIPA also  
 10 states that prisoners may obtain “appropriate relief” against a  
 11 government. 42 U.S.C. § 2000cc-2(a).

12       Plaintiff has sued all defendants in both their individual and  
 13 official capacities. He seeks monetary damages and injunctive  
 14 relief.<sup>1</sup> As plaintiff is no longer in custody, his claims for  
 15 injunctive relief are moot. The question then is whether  
 16 “appropriate relief” under RLUIPA includes monetary damages against  
 17 defendants in either their individual or official capacities.

18       The Ninth Circuit has recently held that RLUIPA does not  
 19 authorize monetary damages against defendants in their official  
 20 capacities. *Holley v. Cal. Dep’t of Corrections*, 599 F.3d 1108,  
 21 1112 (9th Cir. 2010). Thus, plaintiff cannot recover monetary  
 22 damages against defendants in their official capacities for the  
 23 alleged RLUIPA violation.

24       The Ninth Circuit has not yet decided whether RLUIPA  
 25 authorizes money damages against state actors in their *individual*  
 26 capacities. See *Shilling v. Crawford*, 2010 WL 1735039, at \*2 (9th  
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28       <sup>1</sup> Plaintiff’s complaints do not seek declaratory relief. (See Pl. Compl. dated July 16, 2004, at 23; Pl. Compl. dated Apr. 5, 2004, at 15).

1 Cir. Apr. 28, 2010). However, the circuit courts that have  
 2 directly addressed the issue have held that it does not. *Smith v.*  
 3 *Allen*, 502 F.3d 1255, 1275 (11th Cir. 2007); *Sossamon v. Lone Star*  
 4 *State of Texas*, 560 F.3d 316, 327-29 (5th Cir. 2009); *Rendelman v.*  
 5 *Rouse*, 569 F.3d 182, 184 (4th Cir. 2009); *Nelson v. Miller*, 570  
 6 F.3d 868, 885-89 (7th Cir. 2009). Several district courts in this  
 7 circuit have reached the same conclusion. See, e.g., *Sokolsky v.*  
 8 *Voss*, 2010 WL 2991522, at \*4 (E.D. Cal. July 28, 2010); *Alvarez v.*  
 9 *Hill*, 2010 WL 582217, at \*12 (D. Or. Feb. 12, 2010); *Harris v.*  
 10 *Schrirro*, 652 F. Supp. 2d 1024, 1030 (D. Ariz. 2009). The courts  
 11 reasoned that because RLUIPA was enacted pursuant to Congress's  
 12 Spending Clause power, it "cannot be construed as creating a  
 13 private action against individual defendants for monetary  
 14 damages."<sup>2</sup> *Smith*, 502 F.3d at 1275.

15 The Ninth Circuit has held RLUIPA is constitutional under the  
 16 Spending Clause. See *Mayweathers v. Newland*, 314 F.3d 1062,  
 17 1066-67 (9th Cir. 2002). While RLUIPA purports to have Commerce  
 18 Clause underpinnings, the Seventh Circuit has held that it is  
 19 appropriate to interpret RLUIPA as an exercise of the Spending  
 20 Clause power where there is no evidence that the "denial of a  
 21 religious diet affected commerce with foreign nations, among the  
 22 several States, or with Indian tribes." *Nelson*, 570 F.3d at 886

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24       <sup>2</sup> Spending Clause legislation operates like a contract. *Harris*, 652  
 25 F. Supp. 2d at 1029 (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 451  
 26 U.S. 1, 17 (1981)). Individual state actors are not parties to the contract  
 27 in their individual capacities. See *Sossamon*, 560 F.3d at 329  
 28 ("Congressional enactments pursuant to the Spending Clause do not themselves  
 impose direct liability on a non-party to the contract between the state and  
 federal government."). "Construing RLUIPA to provide for damages actions  
 against officials in their individual capacities would raise serious  
 questions regarding whether Congress had exceeded its authority under the  
 Spending Clause." *Nelson*, 570 F.3d at 889.

1 (internal punctuation and alterations omitted); *see also Smith*, 502  
2 F.3d at 1274 n.9. As in *Nelson*, there is no evidence here that  
3 denying plaintiff a kosher diet affected interstate commerce. The  
4 court therefore interprets RLUIPA as an exercise of Congress's  
5 Spending Clause power and concludes that plaintiff cannot obtain  
6 monetary relief against the defendants in their individual  
7 capacities for the alleged RLUIPA violation.

8 Accordingly, as plaintiff's claim for injunctive relief is  
9 moot, and RLUIPA does not authorize recovery of monetary damages  
10 against the defendants in either their individual or official  
11 capacities, plaintiff's RLUIPA claim is hereby dismissed.

12 IT IS SO ORDERED.

13 DATED: This 15th day of December, 2010.

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UNITED STATES DISTRICT JUDGE  
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